

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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E\*TRADE SECURITIES, LLC,

Plaintiff in Interpleader,

v.

**STIPULATION AND ORDER  
OF DISMISSAL**

11-CV-1997 (DLI) (RER)

MYRON WEINER; the SECURITIES AND  
EXCHANGE COMMISSION; the UNITED  
STATES ATTORNEY for the EASTERN  
DISTRICT of NEW YORK; and JOHN  
and JANE DOES 1-100,

Defendants in Interpleader.

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**WHEREAS**, Plaintiff in Interpleader, E\*Trade Securities, LLC ("E\*Trade"), commenced the above-captioned interpleader action (the "Action") on April 22, 2011, by filing a Verified Complaint In Interpleader (the "Complaint") against Defendants in Interpleader Myron Weiner ("Weiner"), the Securities and Exchange Commission (the "SEC"), the United States Attorney for the Eastern District of New York (the "U.S. Attorney"), and John and Jane Does 1-100 pursuant to 28 U.S.C. § 1335.

**WHEREAS**, the Complaint sought to cause the Defendants in Interpleader to litigate any and all claims to approximately \$1.6 million of proceeds from the sale of stock of SpongeTech Delivery Systems, Inc. ("Spongetech") held in an E\*Trade account in the name of Weiner (the "Subject Funds");

**WHEREAS**, on or about May 9, 2011, the U.S. Attorney and the SEC filed a joint

motion to dismiss the Complaint for lack of subject matter jurisdiction, which is currently pending with the Court;

**WHEREAS**, on or about May 31, 2011, E\*Trade deposited the Subject Funds in the amount of \$1,642,428.85 with the Court in connection with this Action;

**WHEREAS**, on or about June 13, 2011, agents of the Internal Revenue Service seized the Subject Funds, together with all proceeds traceable thereto, pursuant to a warrant issued by the Court;

**WHEREAS**, E\*Trade now seeks to voluntarily dismiss the Action without prejudice, in its entirety, pursuant to Fed. R. Civ. P. 41(a); and

**WHEREAS**, Weiner, the U.S. Attorney, and the SEC have agreed to the dismissal of the Action without prejudice, in its entirety, and no other parties have appeared in this Action;

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and between E\*Trade, Weiner, the U.S. Attorney, and the SEC through their respective attorneys of record, as follows:

1. The Action is hereby dismissed, without prejudice, and without costs, expenses or fees, pursuant to Fed. R. Civ. P. 41(a).
2. The persons signing this Stipulation warrant and represent that they possess full authority to bind the parties on whose behalf they are signing to the terms of the Stipulation.
3. This Stipulation and Order contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and Order concerning dismissal of the Action


shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

4. It is contemplated that this Stipulation and Order may be executed in several counterparts, with a separate signature page for each party. All such counterparts and signature pages, together, shall be deemed to be one and the same document.

Dated: New York, New York  
September 9, 2011

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Caryn G. Schectman  
DLA PIPER LLP(US)  
*Attorneys for Plaintiff in Interpleader*  
1251 Avenue of the Americas  
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By:

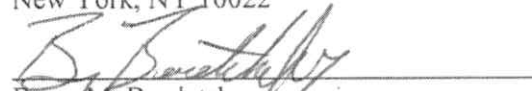


Joshua S. Sohn  
(212) 335-4892

Dated: New York, NY  
September 8, 2011

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570 Lexington Avenue, 44<sup>th</sup> Floor  
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By:




Barry M. Bordetsky  
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Dated: Brooklyn, New York  
September 9, 2011

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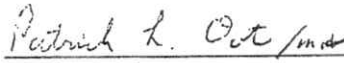
By:

  
Brian D. Morris  
Special Assistant United States Attorney  
(718) 254-6512

Dated: Washington, DC  
September 9, 2011

Melinda Hardy  
Patrick L. Oot  
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By:

  
Patrick L. Oot  
Special Counsel  
(202) 551-5191

SO ORDERED  
this \_\_\_\_\_ day of September, 2011

\_\_\_\_\_  
HONORABLE DORA L. IRIZARRY  
United States District Judge